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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,057	02/26/2002	Antoine F Carpentier	260/264	4658
7590 03/09/2004				
Kurt T Mulville Lyon & Lyon 633 West Fifth St Suite 4700 Los Angeles, CA 90071			EXAMINER ZARA, JANE J	
			ART UNIT 1635	PAPER NUMBER

DATE MAILED: 03/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/937,057

Applicant(s)

CARPENTIER, ANTOINE F

Examiner

Jane Zara

Art Unit

1635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 18-46 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 18-46 are pending in the instant application.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 18-24, drawn to an ISO comprising an octomeric CG motif, classified in class 536, subclass 23.1.
- II. Claim 25, drawn to an ISO comprising an octomeric CG motif and immune system cells, classified in classes 536 and 514, subclasses 23.1 and 1, respectively.
- III. Claim 25, drawn to drawn to an ISO comprising an octomeric CG motif and adjuvants of immunity classified in classes 536 and 514, subclasses 23.1 and 1, respectively.
- IV. Claim 25, drawn to an ISO comprising an octomeric CG motif and cytokines, classified in classes 536 and 514, subclasses 23.1 and 1, respectively.
- V. Claim 25, drawn to an ISO comprising an octomeric CG motif and antitumor antibodies, classified in classes 536 and 530, subclasses 23.1 and 387.1, respectively.
- VI. Claim 25, drawn to an ISO comprising an octomeric CG motif and tumor extracts, classified in classes 536 and 514, subclasses 23.1 and 1, respectively.

- VII. Claim 26, drawn to an ISO comprising an octomeric CG motif and tumor cells, classified in classes 536 and 514, subclasses 23.1 and 1, respectively.
- VIII. Claim 26, drawn to an ISO comprising an octomeric CG motif and irradiated tumor cells, classified in classes 536 and 514, subclasses 23.1 and 1, respectively.
- IX. Claim 26, drawn to an ISO comprising an octomeric CG motif and genetically modified tumor cells, classified in classes 536 and 514, subclasses 23.1 and 1, respectively.
- X. Claims 28-34, drawn to an ISO comprising at least two identical octomeric CG motifs, classified in class 536, subclass 23.1.
- XI. Claim 35, drawn to an ISO comprising at least two identical octomeric CG motifs and immune system cells, classified in classes 536 and 514, subclasses 23.1 and 1, respectively.
- XII. Claim 35, drawn to an ISO comprising at least two identical octomeric CG motifs and adjuvants of immunity, classified in classes 536 and 514, subclasses 23.1 and 1, respectively.
- XIII. Claim 35, drawn to an ISO comprising at least two identical octomeric CG motifs and cytokines, classified in classes 536 and 514, subclasses 23.1 and 1, respectively.

- XIV. Claim 35, drawn to an ISO comprising at least two identical octomeric CG motifs and antitumor antibodies, classified in classes 536 and 530, subclasses 23.1 and 387.1, respectively.
- XV. Claim 35, drawn to an ISO comprising at least two identical octomeric CG motifs and tumor extracts, classified in classes 536 and 514, subclasses 23.1 and 1, respectively.
- XVI. Claim 36, drawn to an ISO comprising at least two identical octomeric CG motifs and tumor cells, classified in classes 536 and 514, subclasses 23.1 and 1, respectively.
- XVII. Claim 36, drawn to an ISO comprising at least two identical octomeric CG motifs and irradiated tumor cells, classified in classes 536 and 514, subclasses 23.1 and 1, respectively.
- XVIII. Claim 36, drawn to an ISO comprising at least two identical octomeric CG motifs and genetically modified tumor cells, classified in classes 536 and 514, subclasses 23.1 and 1, respectively.
- XIX. Claims 37-43, drawn to an ISO comprising at least three octomeric CG motifs, classified in class 536, subclass 23.1.
- XX. Claim 44, drawn to drawn to an ISO comprising at least three octomeric CG motifs and immune system cells, classified in classes 536 and 514, subclasses 23.1 and 1, respectively.

- XXI. Claim 44, drawn to an ISO comprising at least three octomeric CG motifs and adjuvants of immunity, classified in classes 536 and 514, subclasses 23.1 and 1, respectively.
- XXII. Claim 44, drawn to an ISO comprising at least three octomeric CG motifs and cytokines, classified in classes 536 and 514, subclasses 23.1 and 1, respectively.
- XXIII. Claim 44, drawn to an ISO comprising at least three octomeric CG motifs and antitumor antibodies, classified in classes 536 and 530, subclasses 23.1 and 387.1, respectively.
- XIV. Claim 44, drawn to an ISO comprising at least three octomeric CG motifs and tumor extracts, classified in classes 536 and 514, subclasses 23.1 and 1, respectively.
- XV. Claim 45, drawn to an ISO comprising at least three octomeric CG motifs and tumor cells, classified in classes 536 and 514, subclasses 23.1 and 1, respectively.
- XVI. Claim 45, drawn to an ISO comprising at least three octomeric CG motifs and irradiated tumor cells, classified in classes 536 and 514, subclasses 23.1 and 1, respectively.
- XVII. Claim 45, drawn to an ISO comprising at least three octomeric CG motifs and genetically modified tumor cells, classified in classes 536 and 514, subclasses 23.1 and 1, respectively.

XVIII. Claim 46, drawn to an ISO comprising at least three octomeric CG motifs, wherein two of the three octomeric CG motifs are identical, classified in class 536, subclass 23.1.

The inventions are distinct, each from the other because of the following reasons:

Inventions I-XVIII are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different compositions are chemically, biologically, structurally and functionally distinct from each other and thus one does not render the other obvious. The different and distinct oligonucleotides comprising either single, two identical, three non-identical or three, wherein at least two out of three are identical octameric CG motifs are not required to produce each other. The compositions comprising these octameric containing oligonucleotides and additional molecules (e.g. cytokines, antitumor antibodies, tumor extracts, irradiated tumor cells) are not required to produce each other). Therefore these different and distinct Groups are capable of supporting separate patents.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

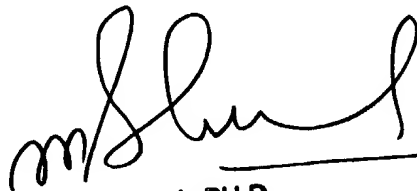
Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Conclusion

Certain papers related to this application may be submitted to Art Unit 1635 by facsimile transmission. The faxing of such papers must conform with the notices published in the Official Gazette, 1156 OG 61 (November 16, 1993) and 1157 OG 94 (December 28, 1993) (see 37 C.F.R. § 1.6(d)). The official fax telephone number for the Group is **703-872-9306**. NOTE: If Applicant *does* submit a paper by fax, the original signed copy should be retained by applicant or applicant's representative. NO DUPLICATE COPIES SHOULD BE SUBMITTED so as to avoid the processing of duplicate papers in the Office.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Jane Zara** whose telephone number is **(571) 272-0765**. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John LeGuyader, can be reached on (571) 272-0760. Any inquiry regarding this application should be directed to the patent analyst, Katrina Turner, whose telephone number is (571) 272-0564. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.


RAM R. SHUKLA, PH.D.
PRIMARY EXAMINER